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Dated: March 19, 2009  
Electronic Signature for William A. Di Bianca: /William A. Di Bianca/

Docket No.: SPINE 3.0-437 CIP CIP CIP CIP CIP CIP CON I  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Errico et al.

Application No.: 10/784,646

Confirmation No.: 8184

Filed: February 23, 2004

Art Unit: 3738

For: ARTIFICIAL INTERVERTEBRAL DISC  
TRIAL HAVING A CONTROLLABLY  
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Examiner: B. E.  
Pellegrino

**PETITION UNDER 37 C.F.R. § 1.78(A) (3) TO CORRECT PRIORITY  
INFORMATION**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Madam:

**I. SUMMARY**

This petition is submitted to correct the priority information in U.S. Patent Application 10/784,646 ("the '646 application"). In particular, the relationship information, in the original filing on February 23, 2004, for the applications from which benefit is claimed is believed to be incorrect and thus correction is sought. The petition fee set forth in 37 C.F.R. § 1.17(t) of \$1,410.00 is provided herewith.

Petitioner submits that the Domestic Priority Data as stated in the Filing Receipt (mailed May 19, 2004) is incorrect. Petitioner requests that the Domestic Priority Data be revised to ***"The present application is a continuation-in-part application of U.S. Patent Application 10/282,356 (filed October 29, 2002) entitled "Instrumentation and Methods For Use In Implanting an Artificial Intervertebral Disc", now U.S. Pat. No. 7,169,182 ("the '182 patent"), which is a continuation-in-part application of U.S. Patent Application Serial Number 10/256,160 (filed***

**September 26, 2002) entitled "Artificial Intervertebral Disc Having Limited Rotation Using a Captured Ball and Socket Joint With a Solid Ball and Compression Locking Post", now U.S. Pat. No. 6,989,032 ("the '032 patent), which is a continuation-in-part application of U.S. Patent Application Serial Number 10/175,417 (filed June 19, 2002) entitled "Artificial Intervertebral Disc Utilizing a Ball Joint Coupling", which is a continuation-in-part application of U.S. Patent Application Serial Number 10/151,280 (filed May 20, 2002) entitled "Tension Bearing Artificial Disc Providing a Centroid of Motion Centrally Located Within an Intervertebral Space", which is a continuation-in-part application of both U.S. Patent Application Serial Number 09/970,479 (filed October 4, 2001) entitled "Intervertebral Spacer Device Utilizing a Spirally Slotted Belleville Washer Having Radially Extending Grooves", now U.S. Pat. No. 6,669,730 ("the '730 patent") as well as U.S. Patent Application Serial Number 10/140,153 (filed May 7, 2002) entitled "Artificial Intervertebral Disc Having a Flexible Wire Mesh Vertebral Body Contact Element", now abandoned the former being a continuation-in-part application of U.S. Patent Application Serial Number 09/968,046 (filed October 1, 2001) entitled "Intervertebral Spacer Device Utilizing a Belleville Washer Having Radially Extending Grooves", now abandoned and the latter being a continuation-in-part application of both the '730 patent (detailed above) as well as U.S. Patent Application Serial Number 10/128,619 (filed April 23, 2002) entitled "Intervertebral Spacer Having a Flexible Wire Mesh Vertebral Body Contact Element", now U.S. Pat. No. 6,863,689 ("the '689 patent"), which is a continuation-in-part application of both U.S. Patent Application Serial Number 09/906,119 (filed July 16, 2001) and entitled "Trial Intervertebral Distraction Spacers", now U.S. Pat. No. 6,607,559 ("the '559 patent") as well as U.S. Patent Application Serial Number 09/982,148 (filed October 18, 2001) and entitled "Intervertebral Spacer Device Having Arch Shaped Spring Elements", now U.S. Pat. No. 6,673,113 ("the '113 patent"). All of the above mentioned applications are hereby incorporated by reference herein in their respective entireties." as shown in the attached "Initial" Application Data Sheet, in the Request for Corrected Filing Receipt and in the revisions to the specification in an Amendment filed today, and any delay by Petitioner in submitting the correct priority data to the U.S. Patent & Trademark Office ("USPTO"), from the time the claim was due to the date the claim was filed, was unintentional.**

## **II. FACTS**

A statement of domestic priority data, on the first page of the specification of the '646 application, filed February 23, 2004, included a claim for priority under 35 U.S.C. §120 as a **"continuation application of U.S. Patent Application Serial Number 10/282,356**

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***(filed October 29, 2002) entitled "Instrumentation and Methods for use in Implanting an Artificial Intervertebral Disc", which is a continuing application of U.S. Patent Application Serial Number 10/256,160 (filed September 26, 2002) entitled "Artificial Intervertebral Disc Having Limited Rotation Using a Captured Ball and Socket Joint With a Solid Ball and Compression Locking Post", which is a continuing application of U.S. Patent Application Serial Number 10/175,417 (filed June 19, 2002) entitled "Artificial Intervertebral Disc Utilizing a Ball Joint Coupling", which is a continuing application of U.S. Patent Application Serial Number 10/151,280 (filed May 20, 2002) entitled "Tension Bearing Artificial Disc Providing a Centroid of Motion Centrally Located Within an Intervertebral Space", which is a continuing application of both U.S. Patent Application Serial Number 09/970,479 (filed October 4, 2001) entitled "Intervertebral Spacer Device Utilizing a Spirally Slotted Belleville Washer Having Radially Extending Grooves" as well as U.S. Patent Application Serial Number 10/140,153 (filed May 7, 2002) entitled "Artificial Intervertebral Disc Having a Flexible Wire Mesh Vertebral Body Contact Element", the former being a continuing application of U.S. Patent Application Serial Number 09/968,046 (filed October 1, 2001) entitled "Intervertebral Spacer Device Utilizing a Belleville Washer Having Radially Extending Grooves" and the latter being a continuing application of both U.S. Patent Application Serial Number 09/970,479 (detailed above) as well as U.S. Patent Application Serial Number 10/128,619 (filed April 23, 2002) entitled "Intervertebral Spacer Having a Flexible Wire Mesh Vertebral Body Contact Element", which is a continuing application of both U.S. Patent Application Serial Number 09/906,119 (filed July 16, 2001) and entitled "Trial Intervertebral Distraction Spacers" as well as U.S. Patent Application Serial Number 09/982,148 (filed October 18, 2001) and entitled "Intervertebral Spacer Device Having Arch Shaped Spring Elements". All of the above mentioned applications are hereby incorporated by reference herein in their respective entireties.*** No Application Data Sheet was filed with the application.

Subsequent to the filing of the '646 application, the '646 application, along with all the related files, were transferred as just one part of a sizeable patent portfolio, to the law firm of Lerner, David, Littenberg, Krumholz and Mentlik, LLP ("Lerner, David"). A revocation and substitution of attorneys was executed by the assignee and filed in the USPTO on January 27, 2005.

After the transfer of files, the prosecuting attorney at Lerner David recognized that the domestic priority information in the '646 application was incorrect. The prosecuting attorney filed an Amendment on November 21, 2007

listing incorrect domestic priority information as a ~~"continuation"~~continuation-in-part application of U.S. Patent Application 10/282,356 (filed October 29, 2002) entitled "Instrumentation and Methods For Use In Implanting an Artificial Intervertebral Disc", now U.S. Pat. No. 7,169,182 ("the '182 patent"), which is a ~~continuing~~ continuation-in-part application of U.S. Patent Application Serial Number 10/256,160 (filed September 26, 2002) entitled "Artificial Intervertebral Disc Having Limited Rotation Using a Captured Ball and Socket Joint With a Solid Ball and Compression Locking Post", now U.S. Pat. No. 6,989,032 ("the '032 patent"), which is a ~~continuing~~ continuation-in-part application of U.S. Patent Application Serial Number 10/175,417 (filed June 19, 2002) entitled "Artificial Intervertebral Disc Utilizing a Ball Joint Coupling", which is a ~~continuing~~ continuation-in-part application of U.S. Patent Application Serial Number 10/151,280 (filed May 20, 2002) entitled "Tension Bearing Artificial Disc Providing a Centroid of Motion Centrally Located Within an Intervertebral Space", which is a ~~continuing~~ continuation-in-part application of both U.S. Patent Application Serial Number 09/970,479 (filed October 4, 2001) entitled "Intervertebral Spacer Device Utilizing a Spirally Slotted Belleville Washer Having Radially Extending Grooves", now U.S. Pat. No. 6,669,730 ("the '730 patent") as well as U.S. Patent Application Serial Number 10/140,153 (filed May 7, 2002) entitled "Artificial Intervertebral Disc Having a Flexible Wire Mesh Vertebral Body Contact Element", the former being a ~~continuing~~ continuation-in-part application of U.S. Patent Application Serial Number 09/968,046 (filed October 1, 2001) entitled "Intervertebral Spacer Device Utilizing a Belleville Washer Having Radially Extending Grooves", now abandoned and the latter being a ~~continuing~~ continuation-in-part application of both ~~U.S. Patent Application Serial Number 09/970,479~~ the '730 patent (detailed above) as well as U.S. Patent Application Serial Number 10/128,619 (filed April 23, 2002) entitled "Intervertebral Spacer Having a Flexible Wire Mesh Vertebral Body Contact Element", now U.S. Pat. No. 6,863,689 ("the '689 patent"), which is a ~~continuing~~ continuation-in-part application of both U.S. Patent Application Serial Number 09/906,119 (filed July 16, 2001) and entitled "Trial Intervertebral Distraction Spacers", now U.S. Pat. No. 6,607,559 ("the '559 patent") as well as U.S. Patent Application Serial Number 09/982,148 (filed October 18, 2001) and entitled "Intervertebral Spacer Device Having Arch Shaped Spring Elements", now U.S. Pat. No. 6,673,113 ("the '113 patent"). All of the above mentioned applications are hereby incorporated by reference herein in their respective entireties."

The prosecuting attorney incorrectly claimed the priority relationship of the '646 application as a continuation-in-part of U.S. Patent Application 10/282,356 and inadvertently filed the Amendment on November 21, 2007 without this petition and related fee.

### III. NATURE OF PETITION

Application No.: 10/784,646  
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Petitioner respectfully submits this petition in connection with the correction of domestic priority, asserting that the delay by Petitioner in submitting the correct priority data to the USPTO, from the time the claim was due and the date the claim was filed, was unintentional.

For the good cause shown, it is respectfully requested that the instant Petition be granted and the priority corrected as shown in the "Initial" Application Data Sheet, Request for Corrected Filing Receipt and amendments to the Cross-Reference to Related Applications paragraph of the specification included in an Amendment filed today.

The Director is hereby authorized to charge our Deposit Account No. 12-1095 to cover the fee set forth in 37 C.F.R. § 1.17(t). If there are any additional charges in connection with this requested Petition, please charge Deposit Account No. 12-1095 therefor.

Dated: March 19, 2009

Respectfully submitted,

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